

COX ENTERPRISES, INC.

IBLA 73-283

Decided December 3, 1973

Appeal from decision (I-3 GL 220) of the District Manager, Idaho Falls District Office, Bureau of Land Management, awarding a grazing lease to one party and denying it to another because the latter's application was untimely filed.

Set aside and remanded.

Applications and Entries: Filing--Grazing Leases:
Generally--Grazing Leases: Applications

Where an application for a grazing lease pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970), is not filed within the sixty-day period established by 43 CFR 4125.1-1(a)(3), the application may be rejected as untimely filed. The exercise of this discretion must be based upon rational considerations and where such application is rejected on the erroneous assumption that such rejection is required under the regulation, the rejection will be set aside.

APPEARANCES: Robert J. Fanning, Esq., Cox & Fanning, Idaho Falls, Idaho, for appellant.

OPINION BY MR. FISHMAN

Cox Enterprises, Inc., 1/ has appealed from a decision of November 24, 1972, by the District Manager of the Idaho Falls District Office, Bureau of Land Management, which granted the renewal

1/ The record indicates that Mr. Clinton Cox and Cox Enterprises, Inc., share an identity of interest in the subject matter of the appeal.

of a grazing lease, pursuant to section 15 of the Taylor Grazing Act, as amended, 43 U.S.C. § 315m (1970), for 80 acres of public land to Lloyd Stolworthy and simultaneously rejected appellant's application for such land "for being untimely filed."

The decision appealed from states that, pursuant to 43 CFR 4125.1-1(a)(3), 2/ the application of appellant was untimely filed. It was denied on that basis and the public lands were leased for grazing to Stolworthy.

The applicable regulation provides that:

Applications to lease lands included in existing grazing leases, including lease renewals, must be filed not less than 30 days nor more than 90 days prior to the expiration of the current lease. An application not filed within this period may be rejected by the Authorized Officer as not timely filed. Application for lands not under lease may be filed at any time. 43 CFR 4125.1-1(a)(3).

In the instant case, an existing grazing lease was held by Stolworthy. It was due to expire November 19, 1972. Therefore, applications to lease any or all of the public lands included therein should have been filed in the period commencing 90 days prior to November 19, 1972, and terminating 30 days before that date. Stolworthy's application bears an execution date of September 10, 1972. Appellant's lease application indicates the signature of its president was placed on the application November 10, 1972.

The decision below states that each application was filed as of its date of execution, although neither application bears a receiving date stamp of the District Office. Appellant does not deny that its application was not timely filed.

It is manifest from the decision below that the District Manager misconstrued the meaning of 43 CFR 4125.1-1(a)(3). It permits, but does not require, the rejection of a grazing application not

2/ The decision of the District Manager incorrectly cited this section as 43 CFR 4125.101(3). However, it correctly quoted the first sentence of the section.

filed in the 60-day period. The regulation calls for the exercise of discretion. See United States v. Maher, 5 IBLA 209, 79 I.D. 109, (1972). While appellant does not dispute the lateness of its filing, it points out that it did not know of the time limitation, that it had informed the District Office over a period of a year of its interest in the lands in issue and that no injustice has been done to Stolworthy or the United States by its late filing. After careful consideration, we have concluded that the explanation offered by appellant justifies the acceptance of its late filing. Accordingly, we find that appellant's application should be considered on its merits, together with the conflicting application of Lloyd Stolworthy. 3/

Accordingly, the cases are remanded to the District Manager to award a lease or leases after affording the parties an opportunity to agree to a division of the lands. 43 CFR 4121.2-1(d)(1). If the parties cannot reach such an agreement the allocation of the use of the public lands shall be made by the District Manager under the criteria of 43 CFR 4121.2-1(d)(2) which encompass such considerations as historical use, proper range management, 4/ general needs of the applicants, and topography.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is set aside and the cases are remanded for appropriate consideration.

Frederick Fishman, Member

We concur:

Douglas E. Henriques, Member

Martin Ritvo, Member

3/ The decision below granted a lease to Stolworthy for the lands in conflict.

4/ The District Manager should carefully consider all pertinent factors. We note that the lands in issue are bordered on two sides by fee land of appellant and on the third side by state land leased by appellant.

